

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8541 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SURAT MUNICIPAL CORPORATION

Versus

SURAT DISTRICT COOP BANK LTD

Appearance:

MR PRASHANT G DESAI for Petitioner
MR MITUL K SHELAT for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 11/04/2000

ORAL JUDGEMENT

#. The petitioner by filing this petition under Articles 227 and 226 of the Constitution of India has challenged

the judgment and order of the learned Second Joint District Judge, Surat in Delay Condonation Application No.61 of 1999, dismissing the application filed for condonation of delay in filing the appeal against the order of the learned Civil Judge (SD) in Municipal Tax Appeal No.16 / 1997 and thereby the delay caused in preferring the appeal was not condoned.

#. The brief facts essential for disposal of this petition are that the respondent Bank filed Municipal Tax Appeal No.16/97 challenging the reopening of the assessment of the years 1979 onwards. The said appeal came to be allowed by the learned Civil Judge (SD), Surat and thereby declared that reopening of the assessment from the year 1979 as illegal. The said judgment was pronounced on August 13, 1998. The petitioner filed Regular Civil Appeal in the District Court under Section 411 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the Act') on May 24, 1999. As the appeal was barred by the period of limitation prescribed under Section 411 of the Act, the delay condonation application No.61 of 1999 was filed along with memo of appeal praying for condonation of delay. It was stated that a certified copy of the said judgement was obtained on February 23, 1999 but the certified copy of the bill of cost and Hukamnama was to be obtained but it was not obtained and because of the departmental procedure, the certified copy of the bill of cost and Hukamnama was applied on May 24, 1999. It was further stated that certified copy of Hukamnama was obtained on May 24, 1999 and the appeal was filed on the same day. In the above circumstances, the petitioner prayed for condonation of delay of 9 months and 12 days caused in filing the appeal under Section 411 of the Act be condoned.

#. The application for condonation of delay was opposed by the respondent Bank by filing their reply vide Exh.10 wherein it has been interalia contended that the petitioner had not explained delay caused in filing the appeal satisfactorily. It was further stated that when the petitioner's advocate applied for certified copy of the judgment and order and the bill of cost has not been explained. The respondent therefore by filing their reply contended that as the petitioner had not assigned sufficient reasons, the application for condonation of delay be dismissed.

#. The learned Second Joint District Judge heard the

delay condonation application No.61 of 1999 and dismissed the application mainly on the ground that the petitioner had not assigned sufficient reasons for the condonation of delay of 9 months and 12 days. It was further held by the learned Second Joint District Judge that the petitioner had not assigned sufficient reasons why they had made the application for certified copy after long delay of 5 months and the reasons assigned of administrative exigencies was not proper and probable reasons which can be accepted for condoning the delay caused in filing the appeal and ultimately, the learned Second Joint District Judge, Surat dismissed the delay condonation application No.61 of 1999. It is therefore this petition under Article 226 and 227 of the Constitution of India challenging the said impugned order rejecting the delay condonation application.

#. The learned counsel for the petitioner has produced the affidavit of advocate who appeared for the petitioner Corporation in the trial court at the relevant time viz. Mr. Jitendra Chhaganlal Desai. It is stated in the affidavit of Mr.Desai that he had conducted the municipal tax appeal No.16 / 97 in the Court of Civil Judge (SD), Surat. It is stated that after the arguments were concluded, the Court had not given the date for pronouncement of the judgment and therefore, he did not know when the judgment was pronounced. It is further stated that as per the practice prevailing in the trial court, when the judgment is pronounced in the open court, signature of advocates of all the concerned parties are obtained. It is stated that his signature was not obtained on the judgement which was pronounced on August 13, 1998. It is also stated in the affidavit that he applied for the certified copy of the judgment on February 1, 1999. It is clarified in the affidavit of Mr.Desai that there was no deliberate mistake on his part. The affidavit of Mr.Desai was not filed in the lower appellate court and for the first time in this Court, the petitioner came out with the case that due to mistake of learned advocate Mr.Desai, delay caused in filing the appeal had occurred. It may be stated that this being petition under Article 227 of the Constitution, no fresh evidence can be permitted to be produced. However, for doing substantial justice between the parties, we have taken the affidavit of the learned advocate Mr.Desai on record. The jurisdiction of this Court under Article 227 of the Constitution is very limited and unless an error apparent on the face of the

record or any perversity is found, this Court can not interfere with the discretion exercised by the trial court. Since the affidavit of Mr.Desai has been filed and the some new grounds are made out, we allow this petition and remand the delay condonation application No.61 of 1999 to the District Court, Surat for considering the same afresh in accordance with law after affording hearing to both the sides and after taking into consideration the affidavit filed by the learned advocate Mr.Desai. We also observe that we have not gone into the merits and demerits of the order impugned as we are remanding the matter to the District Court, Surat. The District Court, Surat shall decide the delay condonation application No.61/99 after taking into consideration the affidavit filed by learned advocate Mr.Desai. Rule is made absolute accordingly. No order as to costs. The office is directed to forthwith send back the record and proceedings to the District Court, Surat.

[M. H. Kadri, J.]

Date : 11-4-2000 [C. K. Buch, J.]

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